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2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE DISTRICT OF PUERTO RICO  
Case No. 17-BK-3283-LTS

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4 In re:  
5 THE FINANCIAL OVERSIGHT AND MANAGEMENT  
6 BOARD FOR PUERTO RICO,

as representative of

7 THE COMMONWEALTH OF PUERTO RICO, et al.,

8 Debtors.

9 -----x

Case No. 17-BK-4780-LTS

10 -----x

In re:

11 THE FINANCIAL OVERSIGHT AND MANAGEMENT  
12 BOARD FOR PUERTO RICO,  
13 as representative of  
14 THE PUERTO RICO ELECTRIC POWER AUTHORITY,  
15 Debtor.

-----x

16 May 4, 2023

9:38 a.m.

17  
18 VIDEOTAPED DEPOSITION of WILLIAM  
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20 Levin Naftalis & Frankel LLP, located at  
21 1177 Avenue of the Americas, New York, New  
22 York 10036, before Anthony Giarro, a  
23 Registered Professional Reporter, a  
24 Certified Realtime Reporter and a Notary  
25 Public of the State of New York.

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JULIA FRAYER (via Zoom)

1 WILLIAM ZARAKAS

2 participating or just observing. And  
3 in that moment, we let the noticing  
4 parties know that we would be  
5 participating. We understood that  
6 that would be communicated to the  
7 board.

8 MS. DALE: It wasn't, but  
9 thank you.

10 EXAMINATION BY

11 MS. COMAS:

12 Q Mr. Zarakas, I only have a  
13 few questions for you. I know it's been  
14 a very long day for you.

15 My first question, it's been  
16 a long trajectory. Can we go back to the  
17 beginning?

18 The purpose of the revenue  
19 envelope calculation is to determine the  
20 maximum amount of revenue that can be  
21 generated over the time of the adjustment  
22 period. Would that be a correct  
23 statement?

24 A Yes.

25 Q And that is based on revenue



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2 generated only if the median household  
3 spent 6 percent of their income on  
4 electricity?

5 MS. DALE: Objection to the  
6 form of the question.

7 THE WITNESS: Answer?

8 MS. DALE: Yes, if you  
9 understand.

10 A Affordability or electricity  
11 spending by the median income household  
12 was part of the development of the  
13 revenue envelope.

14 Q Would that fact require that  
15 this calculation be updated yearly based  
16 on median income?

17 A No.

18 Q Why not?

19 A We set the rate in the first  
20 year based on that and don't change  
21 the -- either the revenue envelope or the  
22 legacy charge rate for the entire term.

23 Q Is there a reason for that?

24 A Yes. The 6 percent is  
25 considered -- is a policy measure. It's

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2 a threshold for energy poverty. It's not  
3 a long-term equilibrium that's sought.

4 Q Regarding the revenue, you  
5 and your team were in the process of  
6 calculating it.

7 Were you considering the  
8 Commonwealth of Puerto Rico's fiscal plan  
9 as well?

10 A As it was used as the  
11 backdrop for the PREPA fiscal plan, yes.

12 Q Are you aware that the  
13 Commonwealth's fiscal plan projects  
14 decreasing real growth for the period of  
15 the plan of adjustment for PREPA?

16 A I believe so, yes.

17 Q Would that increase -- do  
18 you think it is likely for household  
19 income to increase given that real growth  
20 decline?

21 Let me reformulate that.

22 Given that there is a  
23 projection of real growth decline  
24 decrease, would it be likely for  
25 household income to increase in the

1 WILLIAM ZARAKAS

2 period of the plan of adjustment?

3 A Both are compatible. They  
4 both can work, yes.

5 Q How?

6 A Overall, economic activity  
7 is projected to decline, as is population  
8 and number of customers. But the  
9 remaining population and customers,  
10 despite the decline in overall  
11 population, could continue to have modest  
12 adjustments to their household income.

13 Q What would those modest  
14 adjustments be based on?

15 A The escalation rates that  
16 are used for overall cost and wages  
17 included in PREPA's fiscal plan.

18 Q Moving to the PREPA 2022  
19 fiscal plan, are you aware that the rates  
20 projected are lowest in Fiscal Year 2024  
21 versus the projections for Fiscal Year  
22 2051?

23 A Yes.

24 Q Does that mean that as the  
25 plan progresses, the share of wallet

1 WILLIAM ZARAKAS

2 might change based on the increasing

3 rate?

4 A It might.

5 MS. DALE: Objection. We're

6 talking now about the median income

7 residential household?

8 MS. COMAS: Yes. That is

9 correct.

10 MS. DALE: Thank you.

11 Q Was this considered in the

12 calculation for the revenue envelope?

13 MS. DALE: Objection to the

14 form of the question. Was what

15 considered?

16 MS. COMAS: The possibility

17 that the affordable amount of -- the

18 affordable percentage of electricity

19 payment for a household would

20 increase in that period because the

21 rates are increasing.

22 A Could you restate the second

23 part of your question there?

24 Q Yes.

25 Under the premise that the

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2 rate would increase in the period of the  
3 plan, was it considered that that  
4 increase would also increase the burden  
5 on the rate payer, i.e., the shared  
6 wallet that they would be paying?

7 A I think indirectly, but not  
8 as part of the model.

9 Q How would you say it was  
10 considered?

11 A Wages increasing, as well as  
12 costs, might result in a higher or lower  
13 affordability in the future or share of  
14 wallet as you say.

15 Q Questions of counsel  
16 previously in reference to Exhibit P of  
17 the disclosure statement, which is marked  
18 as Exhibit 37 of this deposition, you  
19 stated that part of the --

20 MS. DALE: Hold on. Could  
21 you just wait one second? He just  
22 wants to get the actual exhibit in  
23 his hand.

24 MS. COMAS: Sure.

25 MS. DALE: We have it.

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2 Thank you.

3 Q You stated in that moment  
4 that part of this calculation of the  
5 legacy charge was ensuring that PREPA  
6 would be sustainable; is that correct?

7 A Yes.

8 Q Do you consider that the  
9 plan of adjustment, as it is now, with  
10 the legacy charge that we have now in the  
11 plan, is sustainable for PREPA?

12 A Feasible and sustainable.

13 Q Do you base that conclusion  
14 only on projections that are from PREPA's  
15 fiscal plan?

16 A PREPA's fiscal plan was used  
17 in developing the revenue envelope.

18 Q And the sustainability of  
19 PREPA as you understand it is based on  
20 the projections in the fiscal plan?

21 A Yes.

22 Q Was there any other data,  
23 apart from the fiscal plan that you used?

24 A For purposes of the costs  
25 that PREPA would incur?

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2 Q For purposes of determining  
3 that this would be sustainable. So, yes,  
4 it includes the costs that PREPA would  
5 incur.

6 A Yes. We looked at fixed and  
7 volumetric charges that are charged  
8 throughout the United States that was not  
9 included in the PREPA fiscal plan. And  
10 we looked at both average bills  
11 and percent increases around the United  
12 States as well as for PREPA.

13 Q Did you consider for that  
14 analysis also the declines in Puerto  
15 Rican's GDP in the Commonwealth fiscal  
16 plan?

17 A Only to the extent that it's  
18 included in PREPA's fiscal plan.

19 Q Are you aware that LUMA has  
20 publicly expressed that the budgets that  
21 have been certified by the board for 2023  
22 and 2024 are not adequate or do not  
23 completely fund their operations?

24 A I'm aware that LUMA has  
25 stated in a letter to the board that the

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2 capital and operating expenditures for  
3 the next several years are -- very well  
4 might be higher than what's in the fiscal  
5 plan.

6 Q Based on those expressions,  
7 is it possible that the system costs and  
8 the revenue on the load model are  
9 underestimated?

10 A It is possible.

11 Q What effect would that have  
12 if they were underestimated?

13 A Because we included or -- we  
14 developed our rates in the first year.  
15 And we don't change the rates over the  
16 course of the plan. The intention is  
17 that there's some room for asymmetric  
18 risk, the type of risk that you're  
19 referring to.

20 Q So for my understanding,  
21 that would mean that the remaining  
22 revenue would not be impacted greatly by  
23 such an underestimation because the risk  
24 is compensated?

25 A It depends on the size of



1 WILLIAM ZARAKAS

2 the increases in costs. So if there's  
3 modest increases in cost, it could be  
4 accommodated. If there are major  
5 increases in cost, it might not.

6 Q Do you have like a figure in  
7 mind for what would be a major increase?

8 A We don't.

9 Q Regarding the legacy charge  
10 on Puerto Rico's economy, was there an  
11 analysis on that when you were developing  
12 the legacy charge?

13 A Could you repeat that?

14 Q Was there an analysis on  
15 your part or on your team's part about  
16 the effect that the legacy charge would  
17 have on Puerto Rico's economy?

18 A No.

19 Q Was there an analysis on  
20 whether it would have an impact on  
21 private sector employment?

22 A No.

23 Q Was there an analysis on  
24 whether it would have an impact on  
25 business closures?

1 WILLIAM ZARAKAS

2 A No.

3 Q Is there a reason why these  
4 were not considered?

5 A No particular reason; more  
6 so just the amount of workflow and  
7 ability to complete work.

8 Q To questions of counsel, you  
9 were asked of the percentage of  
10 population that is above the median  
11 income. You recall that?

12 A Yes.

13 Q You recall it was around  
14 45 percent of the population?

15 A Yes.

16 Q To my understanding, that  
17 45 percent of the population under the  
18 current legacy charge would have the same  
19 rate as any other residential  
20 non-subsidized or subsidy eligible  
21 customer; is that correct?

22 A Yes.

23 Q And I recall -- you can  
24 correct me if I'm wrong -- you mentioned  
25 that there was not a consideration of

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2 having a different rate for a higher  
3 income household. Does that sound  
4 correct?

5 A Yes.

6 Q Is there a reason that was  
7 not considered?

8 A Yes.

9 Q Could you tell me what that  
10 reason was?

11 A Sure. I think it was a  
12 matter of a -- a combination of board  
13 policy. But also, it's a relatively  
14 unused discriminatory rate setting method  
15 that is really not used very much, if at  
16 all, in the United States.

17 Q That was going to be my  
18 follow-up question because you mentioned  
19 you have experience in other rate making  
20 processes.

21 So would having different  
22 rates for higher income customers be  
23 considered not standard?

24 MR. MADDEN: Objection to  
25 form.

1 WILLIAM ZARAKAS

2 MS. COMAS: I should

3 rephrase that.

4 Q Would it be considered  
5 standard to have a different rate for  
6 higher income customers?

7 MR. MADDEN: Same objection.

8 MS. COMAS: Can he answer?

9 MS. DALE: He can. He's  
10 just thinking about it.

11 Q Do you need me to rephrase,  
12 sir?

13 A No. I'm okay. I am aware  
14 of only one place in the United States  
15 where it is even being considered.

16 Q Thank you.  
17 During your prior testimony,  
18 you defined price elasticity -- and  
19 you'll correct me if I get this wrong --  
20 as the response of customers to increase  
21 in price.

22 A I couldn't hear the end of  
23 your question.

24 Q You defined price elasticity  
25 as the response of customers to increases

1 WILLIAM ZARAKAS

2 in price. Does that sound correct?

3 A Yes.

4 Q In general, what factors are  
5 considered for that price elasticity  
6 analysis?

7 MS. DALE: Objection to the  
8 form.

9 A Could you be a little more  
10 explicit in your question?

11 Q Would specific be like by  
12 sector or is there a reference?

13 MS. DALE: I didn't hear  
14 your question. I'm sorry, counsel.

15 MS. COMAS: The witness  
16 asked me to be more specific. But  
17 I'm wondering if what would be more  
18 helpful is for me to be specific in  
19 terms of sector or if the general  
20 question that needs to be more  
21 specific.

22 A When you said factors, I  
23 wasn't sure what you meant by that.

24 Q What are some elements of  
25 the analysis --

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2 MS. DALE: Objection.

3 Q -- for price elasticity?

4 MS. DALE: Sorry to speak  
5 over you. Objection to form.

6 A In determining the price  
7 elasticity of demands that we used, we  
8 looked at studies that have been done,  
9 both going back sometime, as well as  
10 studies that have been a little more  
11 current to help us understand recent  
12 additions or incremental effects on price  
13 elasticity.

14 Q To questions from counsel  
15 regarding whether you did a separate  
16 affordability analysis for the population  
17 of residential customers that is above  
18 the median income, if I recall, you  
19 answered no; is that correct?

20 A That's correct.

21 Q Was there a separate  
22 analysis of price elasticity for that  
23 population?

24 A No.

25 Q Is it possible that there

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2 would be differences in the results of  
3 that analysis?

4 A We didn't segment the price  
5 elasticity of demand by segments within a  
6 class. To your question, higher income,  
7 higher usage customers very well might  
8 have higher price elasticities of demand.  
9 But we did not look at income levels in  
10 determining price elasticities of demand.

11 Q But you've mentioned just  
12 now that they might have higher  
13 elasticity, the higher income population?

14 A Yes.

15 Q Would you be able to explain  
16 why that is?

17 A Yes. Some of the -- price  
18 elasticity of demand is driven by your  
19 ability to access substitutes. And  
20 higher income customers tend to be able  
21 to access more substitutes; for example,  
22 they would be able to put photovoltaics  
23 on their roofs and put storage batteries  
24 in their house as well.

25 Q Would it be an accurate

1 WILLIAM ZARAKAS

2 inference that placing a higher rate on a  
3 higher income household could lead to  
4 higher elasticity?

5 MS. DALE: Objection to form  
6 to the hypothetical. But if you can  
7 answer it.

8 A I think the answer is that  
9 higher prices on higher income customers  
10 might lead to more defection from using  
11 PREPA.

12 Q Thank you.

13 Are you aware of how long  
14 PREPA has been operating under certified  
15 fiscal plans for PROMESA?

16 A Could you say the last part  
17 again? I'm sorry.

18 Q For PROMESA, are you aware  
19 of how many years PREPA has been  
20 operating under certified fiscal plans  
21 for PROMESA, the law?

22 A I don't know if I know the  
23 answer to that question.

24 Q As part of your analysis,  
25 did you study any prior fiscal plans,



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2 other than the 2022 fiscal plan?

3 A We looked at several fiscal  
4 plans, yes.

5 Q Can you remember which one?

6 A I believe we looked at 2020  
7 and 2021 as well.

8 Q When you looked at those  
9 fiscal plans, were you able to observe  
10 the indices for reliability?

11 A We looked at reliability  
12 through other data sources.

13 Q What data sources?

14 A ITripoli and EIA, I believe.  
15 I'm sorry. It's not iTripoli. It's EEI,  
16 Edison Institute.

17 Q Based on that review, would  
18 you say it's accurate that PREPA has not  
19 met projections for system reliability  
20 improvements in the past few years?

21 Let me rephrase that  
22 question.

23 Would you say that in those  
24 time periods that you studied, PREPA has  
25 met reliability improvement goals, to

1 WILLIAM ZARAKAS

2 your knowledge?

3 A The data sources that I just  
4 talked about don't talk about PREPA  
5 goals. It talks about PREPA performance.  
6 But you just prompted me to realize that  
7 there were some targets in the LUMA  
8 contract. And I believe those targets  
9 have not been met, either by LUMA or  
10 PREPA before LUMA.

11 Q You mentioned that the  
12 sources that you did consult were  
13 performance, not goals; is that correct?

14 A Correct.

15 Q Could you see any  
16 improvement in performance in those  
17 sources?

18 A No.

19 Q Could this lack of  
20 improvement be due to operational  
21 resources?

22 MS. DALE: Objection to the  
23 form. You can answer.

24 A I'm not sure what you mean  
25 by operational resources.

1 WILLIAM ZARAKAS

2 Q I'll rephrase.

3 Is it possible that the lack  
4 of improvement in reliability performance  
5 is due to a lack of funding for  
6 operational processes?

7 A There's a difference in  
8 terminology. Operational improvements  
9 are an expense item versus a capital  
10 item. So I'm just not sure I understand  
11 your question.

12 Q Let me clarify that.  
13 The costs for improving  
14 reliability, are those capital  
15 expenditures?

16 A In part, yes.

17 Q They are not operational  
18 expenses?

19 A Also some operational  
20 expenditures.

21 Q So I will ask the question  
22 for both things.

23 Could the lack of funding  
24 for capital expenditures be causing this  
25 lack of improvement in performance?

1 WILLIAM ZARAKAS

2 A It could. We did not study  
3 that. But it could.

4 Q And is the same true for  
5 lack of funding for operational  
6 expenditures?

7 A It could. Again, we did not  
8 study that.

9 Q Since you did not study it,  
10 I'm going to assume the answer to this is  
11 the same.

12 Did the revenue envelope  
13 consider the costs of meeting those  
14 reliability improvements?

15 A Only to the extent that it's  
16 included in the fiscal plan.

17 MS. COMAS: That is the  
18 extent of my questions. Thank you  
19 very much.

20 MS. DALE: Anybody else have  
21 any other questions for the witness?

22 MR. MADDEN: I have brief  
23 follow-up. But I'll let anyone else  
24 go first. I'll be very brief.

25 FURTHER EXAMINATION BY